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In re Application of :  
KWONG et al. :  
Application No.: 09/856,200 : DECISION ON  
PCT No.: PCT/US98/23905 : RENEWED PETITION  
Int. Filing Date: 10 November 1998 : UNDER 37 CFR 1.137(b)  
Priority Date: 10 November 1997 :  
Attorney Docket No.: 54203-H-CT/JPW/SHS :  
For: CRYSTAL COMPRISING HUMAN :  
IMMUNODEFICIENCY VIRUS :  
ENVELOPE GLYCOPROTEIN GP120 . . .

This is a decision on applicants' "RENEWED PETITION UNDER 37 CFR 1.137(b)" filed in the Patent and Trademark Office (PTO) on 07 November 2001.

### BACKGROUND

On 03 March 1998, applicants filed international application PCT/US98/23905 which claimed a priority date of 10 November 1997 and which designated the United States. A proper Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 10 May 2000.

On 14 May 2001, applicants filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: the basic national fee, a copy of the international application, and the present petition seeking revival under 37 CFR 1.137(b) with the appropriate fee. In a decision dated 07 September 2001, applicants petition was dismissed without prejudice.

On 07 November 2001, applicants filed Renewed Petition under 37 CFR 1.137(b).

### DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after applicant becomes aware of the abandonment and must be accompanied by: (1) the required reply, unless previously filed, (2) the petition fee required by law, (3) a statement that the entire delay in filing the

required reply from the due date of the reply until the filing of a grantable petition was unintentional and (4) a terminal disclaimer (for applications filed before 8 June 1995). The 07 September 2001 decision indicated that petitioner satisfied items (1), (2) and (4) above.

With regards to item (3) above, applicants have provided the necessary statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. Furthermore, the renewed petition under 37 C.F.R. 1.137(b) and "Second Declaration of Ofra Weinberger . . ." filed 07 November 2001 have overcome the statements made in the prior petition under 37 C.F.R. 1.137(b) filed in the PTO on 14 May 2001. In view of Second Declaration of Ofra Weinberger filed 07 November 2001 stating that, "[a]lthough it was always my intention that the subject PCT Application enter the national stage in the United States, I mistakenly instructed Mr. Landa that Columbia did not wish that the subject PCT application enter the national or regional stage because I thought that this instruction applied only to foreign countries other than the United States. I intended my instruction to apply only to the designated 'foreign' countries, not the United States. I did not intend for my instruction to mean that the application should not enter the national stage in the United States," the delay is considered to be unintentional. The Patent and Trademark is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

### CONCLUSION

All of the requirements of 37 CFR 1.137(b) have been met and applicant's renewed petition to revive is **GRANTED**.

This application is being forwarded to the United States Designated/Elected Office (US/DO/EO) for continued processing including the issuance of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration along with the \$130 surcharge for filing the oath or declaration after the thirty-month period is required.

  
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